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9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10 Deandre Michael Howard,
 11 Plaintiff,

12 v.

13 United States of America; DOES I through
 14 X, inclusive and ROE Business Entities I
 through X, inclusive,
 15 Defendants.
 16

Case No. 2:22-cv-01004-JAD-DJA

**Federal Defendant's Motion for Leave
 to Extend Time to File Motion for
 Exception from Attendance
 Requirements for Settlement
 Conference**

(First Request)

17 Pursuant to the Court's Orders (ECF Nos. 73–74) and Local Rules ("LR") 26-3 and
 18 IA 6-1, the United States of America, by and through the Federal Bureau of Investigations
 19 ("FBI") (collectively "Federal Defendant"), hereby respectfully moves this Court for an
 20 order granting leave of Court for Federal Defendant to file its Motion for Exception from
 21 Attendance Requirements for Settlement Conference ("Exception Motion"). The Exception
 22 Motion was due on October 25, 2024, but was inadvertently not filed due to a clerical
 23 mistake. Upon discovering this mistake, on October 28, 2024, Federal Defendant conferred
 24 with Plaintiff's Counsel, who consents to this requested extension. This is Federal
 25 Defendant's first requested extension.

26 **I. Introduction**

27 The Court ordered a mandatory settlement conference in this matter, which is
 28 calendared for November 8, 2024, at 10:00 AM. *See* ECF Nos. 73–74. The Court's Order

1 Setting Settlement Conference requires “a representative with binding authority to settle this
2 matter up to the full amount of the claim to be present for the duration of the SC,” and that
3 any requests for exceptions to such attendance requirements be made at least 14 days before
4 the conference. *See* ECF No. 73 at p. 1. Federal Defendant intends to seek exception to this
5 attendance requirement, and respectfully requests leave of Court to belatedly file this request
6 due to excusable neglect.

7 **II. Points and Authorities**

8 Federal Defendant respectfully moves for an order granting leave of Court to file its
9 Exception Motion, due to excusable neglect. LR 26-3 states that “[an extension] request
10 made after the expiration of the subject deadline will not be granted unless the movant also
11 demonstrates that the failure to act was the result of excusable neglect.” *See* LR 26-3. This
12 Court has noted that excusable neglect encompasses situations in which the failure to
13 comply with a filing deadline is attributable to negligence or omissions caused by
14 carelessness. *See Wells v. McMahon*, No. 318-cv-00297-LRH-CBC, 2019 WL 1779566, at *5
15 (D. Nev. Apr. 22, 2019) (citing *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)).
16 In determining whether the excusable neglect standard has been met, courts examine four
17 factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its
18 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the
19 movant acted in good faith. *See Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th
20 Cir. 2000).

21 Federal Defendant intends to request an exception to the representative attendance
22 requirement outlined in the Court’s Order Setting Settlement Conference (ECF No. 73).
23 Such a request was due on October 25, 2024. *See* ECF Nos. 73–74. Federal Defendant’s
24 failure to file this request is excusable under the applicable four-factor test. First, allowing
25 Federal Defendant to file its Exception Motion will not unfairly prejudice Plaintiff, as the
26 Exception Motion will be filed on October 28, 2024 (one business day after the original
27 deadline). Further, Plaintiff’s Counsel consents to the filing of this instant motion.
28 Moreover, Federal Defendant’s Exception Motion will have no substantive effect on

1 Plaintiff, as the Exception Motion is a routine filing that only requests permission for the
2 undersigned AUSAs to represent Federal Defendant at the settlement conference, rather
3 than having multiple government officials (often from various locations) attend the
4 conference. Federal Defendant's Exception Motion, if accepted, will not hinder the
5 proceedings in this case—but rather expedite matters and also conserve resources. Second,
6 the length of the delay and potential impact on proceedings are minimal, as the Exception
7 Motion was due on Friday, October 25, and is now being filed on Monday, October 28.
8 Third, Federal Defendant's delay was due to an inadvertent clerical issue. While the United
9 States Attorney's Office's docketing system tracks deadlines, the attendance exception
10 deadline was inadvertently not calendared following the rescheduling of the settlement
11 conference from October 21, 2024, to November 8, 2024. *See* ECF Nos. 73–74. Federal
12 Defendant's delay in seeking an exception to the attendance requirement was due a clerical
13 calendaring error. This error was a regrettable mistake and was not done in disregard of this
14 honorable Court's orders. Lastly, this motion is brought in good faith. Counsel for Federal
15 Defendant sought to correct this issue as soon as it was discovered on October 28, and did
16 so by immediately contacting Plaintiff's Counsel and filing this instant extension request.
17 Federal Defendant ultimately seeks to conserve the time and resources of the Court and the
18 parties by filing its Exception Motion. If leave is granted and the Exception Motion is
19 granted, the undersigned AUSAs will fully participate in settlement discussions on behalf of
20 Federal Defendant.

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III. Conclusion

Based on the foregoing, Federal Defendant respectfully moves this Court for an order granting leave of Court for Federal Defendant to file its Motion for Exception from Attendance Requirements for Settlement Conference, due to excusable neglect caused by an inadvertent clerical mistake.

Respectfully submitted this 28th day of October 2024.

JASON M. FRIERSON
United States Attorney

/s/ Reem Blaik
R. THOMAS COLONNA
REEM BLAIK
Assistant United States Attorneys

IT IS SO ORDERED:



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

DATED: 10/29/2024